

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re:	) Chapter 11
	)
Squirrels Research Labs LLC, <i>et al.</i> <sup>1</sup>	) Case No. 21-61491
	) (Jointly Administered)
Debtors.	)
	) Judge Russ Kendig

**MOTION OF DEBTOR AND DEBTOR-IN-POSSESSION SQUIRRELS  
RESEARCH LABS, LLC FOR ENTRY OF AN ORDER: (I) AUTHORIZING THE  
DEBTOR TO PAY (A) PREPETITION EMPLOYEE WAGES, SALARIES AND  
RELATED ITEMS; AND (B) PREPETITION CONTRIBUTIONS TO, AND BENEFITS  
UNDER, EMPLOYEE BENEFIT PLANS; AND (II) GRANTING RELATED RELIEF**

Squirrels Research Labs LLC, one of the debtors and debtors-in-possession in the above-captioned case (the “Debtor”), hereby submits this motion (the “Motion”), pursuant to Sections 105(a), 363, 507(a)(4) and 507(a)(5) of Title 11 of the United States Code (the “Bankruptcy Code”), for entry of an order: (i) authorizing the Debtor to pay: (a) prepetition employee wages, salaries and related items; and (b) prepetition contributions to, and benefits under, employee benefits plans; and (ii) granting related relief.

**JURISDICTION & VENUE**

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Squirrels Research Labs LLC (9310), case no. 21-61491 and the Midwest Data Company LLC (1213), case no. 21-61492.

### **BACKGROUND**

3. On November 23, 2021 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Subchapter V of Chapter 11 of the Bankruptcy Code.

4. The Debtor is operating its business as a debtor-in-possession pursuant to Section 1184 of the Bankruptcy Code. Frederic P. Schwieg has been appointed as the Subchapter V Trustee.

5. The facts and circumstances giving rise to this case are set forth in the Declaration of David Stanfill, filed on the Petition Date.

### **FACTS RELEVANT TO THIS MOTION**

6. Prior to the Petition Date, the Debtor employed approximately 7 employees (the “Employees”) who participated in the Squirrels 401(K) & Profit Sharing Plan (the “401(k) Plan”), which was intended to be a qualified retirement plan under the Internal Revenue Code. These Employees include George Jimenez, Kyle Slutz and Seth Stanfill, who are insiders of the Debtor.

7. The Debtor withheld deferred amounts as elected by the Employees from their wages and made matching contributions in the amount of 100% of the elective deferral amount up to 3% of each employee’s compensation and 50% of the elective deferral amount up to 3 to 5% of employee’s compensation.

8. As of the filing date of this Motion, the following amounts are owed to the Employees (the “Prepetition Employee Obligations”): (i) the employee elective deferral amounts withheld from the employee’s pay in the total approximate amount of \$2,278.67; and (ii) the employer matching contributions for the 401(k) Plan, which total approximately \$684.26.

9. Prior to the Petition Date, the Debtor terminated all of its employees after its assets were frozen following a default on its obligations to Avnet, Inc. Thus, on the Petition Date, there

was no need for the Debtor to file a first-day wage motion on an emergency basis. Now, however, in order to ensure that the Debtor is in compliance with the requirements of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), the Debtor requests authority to pay the Prepetition Employee Obligations. Indeed, the Debtor’s failure to timely pay the Prepetition Employee Obligations may be a violation of ERISA, which might result in potential personal liability for the Debtor’s officers and hinder the Debtor’s abilities to confirm a Chapter 11 plan.

10. No employee will be entitled to more than \$13,650 in unpaid compensation or benefits.

#### **BASIS FOR RELIEF REQUESTED**

11. The Debtor seeks relief, pursuant to Sections 105(a), 363, 507(a)(4) and 507(a)(5) of the Bankruptcy Code, to pay the Prepetition Employee Obligations.

12. The unpaid Prepetition Employee Obligations are entitled to priority treatment under the Bankruptcy Code. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code afford priority status to wage claims up to \$13,650 per individual—including claims for wages, salaries or commissions—and to claims for contributions owed to employee benefit plans. As priority claims, the Prepetition Employee Obligations are entitled to payment in full before any general unsecured claims asserted against the Debtor can be satisfied.

13. The Debtor believes that there will be enough funds in the estate to pay all administrative and priority claims in full. Thus, granting the relief sought in this Motion affects only the timing of payments to the former employees, and does not negatively affect recoveries for general unsecured creditors.

14. Moreover, the Debtor's payment of the Prepetition Employee Obligations is consistent with the public policy underlying ERISA, which is to protect individuals in employee benefit plans. *See Auto Owners Ins. Co. v. Thorn Apple Valley, Inc.*, 31 F.3d 371, 375 (6th Cir. 1994) (citing 20 U.S.C. § 1001(b)); *see also Toledo Blade Newspaper Unions-Blade Pension Plan v. Inv. Performance Svcs., LLC*, 448 F. Supp. 2d 871, 875 (N.D. Ohio 2006) (collecting authorities).

15. In light of the foregoing, the Debtor respectfully submits that the payment of the Prepetition Employee Obligations represents an exercise of the Debtor's sound business judgment and is in the best interests of the Debtor's estate and creditors.

16. Relief similar to the relief requested herein has been granted by courts in this District and elsewhere in other Chapter 11 cases. *See, e.g., In re CBK Futures, Inc.*, No. 17-16795 (JPS) (Bankr. N.D. Ohio Nov. 22, 2017) [Docket No. 36]; *In re Data Cooling Technologies LLC, et al.*, No. 17-52170 (AMK) (Bankr. N.D. Ohio Sept. 13, 2017) [Docket No. 32]; *In re SCI Direct LLC, et al.*, No. 17-61735 (RK) (Bankr. N.D. Ohio Aug. 10, 2017) [Docket No. 33]; *In re Wall St. Recycling L.L.C.*, No. 17-51701 (AMK) (Bankr. N.D. Ohio Jul. 25, 2017) [Docket Nos. 26 & 27]; *Wings of Medina Liquidation, Inc. (f/k/a In re QSL of Medina, Inc.)*, No. 15-52722 (AMK) (Bankr. N.D. Ohio Nov. 17, 2015) [Docket No. 26]; *In re Energy Future Holdings Corp.*, No. 14-10979 (CSS) (Bankr. D. Del. June 4, 2014) [Docket No. 786].

### **NOTICE**

17. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the Northern District of Ohio; (ii) Avnet, Inc; (iii) Instantiation, LLC; (iv) the twenty (20) largest unsecured creditors as reflected on each of the Debtor's Chapter 11 petitions; (vi) the Subchapter V Trustee; (vii) the Employees; (viii) the Squirrels 401(k) & Profit Sharing Plan c/o

plan sponsor, Squirrels, LLC, 121 Wilbur Drive, NE, North Canton, OH 44720; and (ix) all parties that have appeared in this case and will automatically receive notice via the Court's ECF system. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice need be given.

18. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, the Debtor requests the relief sought by this Motion be immediately effective and enforceable upon entry of the order requested hereby.

19. No prior request for the relief sought in this Motion has been made to this or any other Court.

### **CONCLUSION**

WHEREFORE, the Debtor respectfully request that the Court: (i) enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein; and (ii) grant such other and further relief to the Debtor as the Court may deem proper.

Dated: February 17, 2022

Respectfully submitted,

/s/ Julie K. Zurn  
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*Counsel for the Debtors  
and Debtors-in-Possession*

## **CERTIFICATE OF SERVICE**

I, Julie K. Zurn, hereby certify that on February 17, 2022, a true and correct copy of the *Motion Of Debtor And Debtor-In-Possession Squirrels Research Labs, LLC For Entry Of An Order: (I) Authorizing The Debtor To Pay (A) Prepetition Employee Wages, Salaries And Related Items; And (B) Prepetition Contributions To, And Benefits Under, Employee Benefit Plans; And (II) Granting Related Relief* was served via the court's Electronic Case Filing System on these entities and individual who are listed on the court's Electronic Mail Notice List:

John C. Cannizzaro on behalf of Interested Party Instantiation LLC at  
John.Cannizzaro@icemiller.com, lauren.prohaska@icemiller.com

Christopher Paul Combest on behalf of Creditor Avnet, Inc. at  
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John G. Farnan on behalf of Creditor Cincinnati Insurance Company at  
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Kate M. Bradley ust44 on behalf of U.S. Trustee United States Trustee at kate.m.bradley@usdoj.gov

And by regular U.S. Mail on February 17, 2022, on the following:

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